

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

KELVIN ANDRE SPOTTS,

Petitioner,

vs.

CIVIL ACTION NO. 3:00-0647
CRIMINAL ACTION NO. 3:98-00047-01

UNITED STATES OF AMERICA ,

Respondent.

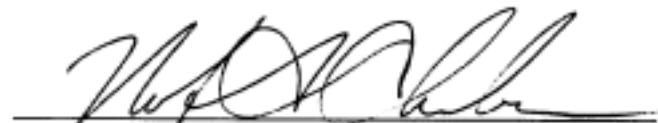
ORDER

Petitioner Kelvin Andre Spotts has filed an Application for a Certificate of Appealability. In accordance with Federal Rule of Appellate Procedure 22(b), an appeal by an applicant for a writ of habeas corpus may not proceed unless a district or circuit judge issues a certificate of appealability pursuant to the Antiterrorism and Effective Death Penalty Act (“AEDPA”), 28 U.S.C. § 2253(c) (1996). *See* Fed. R. App. P. 22(b). Pursuant to the AEDPA, a district court may not issue a certificate of appealability unless the applicant makes a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). “To make the required showing, the petitioner must demonstrate that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Lyons v. Lee*, 316 F.3d 528, 532 (4th Cir. 2003) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (other citation and internal quotations omitted)).

In this case, Petitioner seeks a certificate of appealability from the Court's denial of his "Notice of Filing and Motion for Relief from Judgment." *Order* (entered Feb. 12, 2009). In the Order, the Court found that, "[a]lthough Petitioner . . . filed the motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, it clearly . . . [was] yet another successive motion for collateral review under . . . [28 U.S.C. § 2255] in which Petitioner alleges ineffective assistance of counsel." *Id.* Therefore, the Court denied the motion with prejudice because he did not get prior authorization by the Fourth Circuit Court of Appeals to file it. *Id.* The Court finds that this issue is not debatable amongst reasonable jurists nor is it an issue that deserves to proceed further. Accordingly, the Court **FINDS** that Petitioner has not made the necessary showing to warrant the issuance of a certificate of appealability. Accordingly, the Court **DENIES** Petitioner's motion. *See* Fed. R. App. P. 22(b); 28 U.S.C. § 2253(c).

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: March 31, 2009



ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE